



**Via electronic mail**

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April 21, 2023

**Re: *M.D. v. Abbott***  
**Psychotropic Medication Utilization Review Request for PMC Class**

**CONFIDENTIAL**

Dear Counsel,

On April 12, 2023, Plaintiffs' attorneys "requested a [Psychotropic Medication Utilization Review] for all PMC children that are [prescribed] 4 or more psychotropic drugs" and who have not received a PMUR "in the past 5 months" pursuant to DFPS, CPS Handbook § 11327, which provides that "an attorney...can request a PMUR any time they have concerns about a child's psychotropic medication regime." Hr'g. Tr. at 73, Apr. 12, 2023.

The Psychotropic Medication Utilization Parameters detail certain criteria involving children prescribed a psychotropic medication that indicate a need for further review. *See*



HHSC, Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (6th Version); DFPS, Medical Services Resources Guide (Apr. 2020), at 18. These criteria indicating need for further review include:

- Absence of a thorough assessment for the DSM-5 diagnosis(es) in the child's medical record.
- Four (4) or more psychotropic medications prescribed concomitantly (side effect medications are not included in this count).
- Prescribing of:
  - Two (2) or more concomitant stimulants
  - Two (2) or more concomitant alpha agonists
  - Two (2) or more concomitant antidepressants
  - Two (2) or more concomitant antipsychotics
  - Three (3) or more concomitant mood stabilizers
- The prescribed psychotropic medication is not consistent with appropriate care for the patient's diagnosed mental disorder or with documented target symptoms usually associated with a therapeutic response to the medication prescribed.
- Psychotropic polypharmacy (2 or more medications) for a given mental disorder is prescribed before utilizing psychotropic monotherapy.
- The psychotropic medication dose exceeds usual recommended doses (literature based maximum dosages in the following tables).
- Psychotropic medications are prescribed for children of very young age, including children receiving the following medications with an age of:
  - Stimulants: Less than three (3) years of age
  - Alpha Agonists: Less than four (4) years of age
  - Antidepressants: Less than four (4) years of age
  - Mood Stabilizers: Less than four (4) years of age
  - Antipsychotics: Less than five (5) years of age
- Prescribing by a primary care provider who has not documented previous specialty training for a diagnosis other than the following (unless recommended by a psychiatrist consultant):
  - Attention Deficit Hyperactive Disorder (ADHD)
  - Uncomplicated anxiety disorders
  - Uncomplicated depression
  - Antipsychotic medication(s) prescribed continuously without appropriate monitoring of glucose and lipids at least every 6 months.

If the child's psychotropic medication regimen does not appear to be in compliance with the Psychotropic Medication Utilization Parameters, the case is referred for a PMUR in one of the following ways:

- Health Screening – A service manager calls a caregiver and medical consentor to conduct a health screening on a child who is newly placed or has changed



placements.

- Automated Pharmacy Claims Data – An automated process using pharmacy information identifies when a child’s medications are outside parameters.
- External Request – CPS Nurse Consultants, other CPS staff, CASAs, children’s caregivers, attorneys, residential child care providers and other interested parties can request a medication review.
- Court Request – Judges having jurisdiction over CPS cases can request a PMUR to answer questions about a foster child’s medication.

*See* Superior Healthplan, Psychotropic Medication Utilization Review (PMUR) Process for STAR Health Members FAQ and Stakeholder Manual (July 2019); DFPS, Medical Services Resources Guide (Apr. 2020), at 17.

After a PMUR is triggered or requested, a STAR Health Behavioral Health Service Manager conducts a preliminary screening and requests documentation from the prescribing provider, who must respond within several days; the STAR Health Behavioral Health Medical Director reviews the screening; the STAR Health Behavioral Health Service Manager faxes a copy of the completed PMUR report to the requestor; Superior posts the PMUR results to the child’s Health Passport, and CPS staff files the results of the PMUR in the child’s record. *See* DFPS, Medical Services Resources Guide (Apr. 2020), at 18-19. Not all inquiries about a child’s psychotropic medication will result in a formal PMUR report. *Id.* at 19. If the inquiry does not result in a formal PMUR report, documentation that the child’s medication regimen was reviewed can be shared with the requestor. *Id.*

Attorneys for the Plaintiffs have serious concerns about the Plaintiff children’s psychotropic medication regime. These concerns are based on detailed factual findings detailed in the Monitors’ Site Visit Report, the accuracy of which the State does not dispute. *See generally* Dkt. 1337 at 4-15, Mar. 27, 2023. Among other findings, the Report confirms that medications were prescribed in contravention of the Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (Medication Utilization Parameters). For example, numerous children at multiple sites were prescribed four or more psychotropics (excluding medications prescribed for side effects) under circumstances that violate the Medication Utilization Parameters. A PMUR had been completed at some point for only 28% of children, however, and of those, PMURs were completed a year or more before placement at a time when the children were taking a different set of medications than those prescribed at the time of the



site visits. In short, the Report documents dangerous conditions at a number of group residential facilities that place the children at risk of serious harm.

The Monitors also found numerous medication errors and errors documenting the administration of medicine. Some medication logs were prefilled and did not include medication counts, some did not consistently document the time medication was administered, and others had blanks with no information at all. After hospitalization, children were administered medication at a lower dosage than prescribed while hospitalized. After a doctor decreased the dosage of a medication, children continued to receive a higher dosage. Children did not receive medication because they were waiting for a refill of a prescription. Facilities were named as medical consenters, and site records did not include the appropriate consent forms. These findings constitute violations of the Medication Utilization Parameters, reflect unsafe placements, and raise grave concerns about the psychotropic medication regime of the PMC class.

According to the State's policies and procedures, requests for PMURs for foster children can be made by their attorneys and other appropriate persons directly to the PMUR team by email. *See* Superior Healthplan, Psychotropic Medication Utilization Review (PMUR) Process for STAR Health Members FAQ and Stakeholder Manual (July 2019). This letter is being transmitted directly to the PMUR team and constitutes our formal request.

Defendants' objection at the hearing—that the PMUR request is “far afield from the Remedial Orders”—is both inaccurate and highly concerning. Hr'g. Tr. at 74, Apr. 12, 2023. As DFPS Commissioner Muth affirmed to the Court, the Medication Utilization Parameters are designed and in place to ensure the safety of foster children with regard to utilization of powerful psychotropic drugs. *Id.* at 58. To state the obvious, the Court's Remedial Orders are directed, and were upheld by the Fifth Circuit, to ensure that PMC children are kept safe in State custody. Allowing State-sanctioned placements to misuse and abuse powerful drugs on children, in violation of the Medication Utilization Parameters, puts the children at risk of serious harm. Accordingly, this PMUR request is a request by Plaintiffs' attorneys pursuant to existing, unambiguous CPS policy and consistent with the Court's Remedial Orders.

Please let us know whether the State will permit the PMUR team to process our request pursuant to CPS policy or if you plan to instruct the PMUR team to deny our PMUR request or withhold any formal PMUR reports in violation of CPS policy and refuse to



take immediate steps to eliminate this ongoing risk of serious harm to PMC children. We would appreciate receiving a response from you no later than April 28, 2023.

Sincerely,  
/s/ Marcia Robinson Lowry  
Executive Director  
A Better Childhood, Inc.